

CHAPTER 395

TAXATION

HOUSE BILL 19-1256

BY REPRESENTATIVE(S) Gray and Snyder, Exum, Tipper;
also SENATOR(S) Todd, Court, Crowder, Moreno.

AN ACT**CONCERNING ELECTRONIC FILING OF CERTAIN TAXES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 39-21-119.5 as follows:

39-21-119.5. Mandatory electronic filing of returns - mandatory electronic payment - penalty - waiver - definitions. (1) FOR PURPOSES OF THIS SECTION, "RETURN" MEANS ANY REPORT, CLAIM, TAX RETURN STATEMENT, OR OTHER DOCUMENT REQUIRED OR AUTHORIZED UNDER ARTICLES 11 AND 25 OF TITLE 29, ARTICLE 11 OF TITLE 30, ARTICLES 22, 26, 27, 28, 28.5, 28.8, AND 29 OF THIS TITLE 39, ARTICLE 2 OF TITLE 40, ARTICLE 3 OF TITLE 42, ARTICLE 4 OF TITLE 43, AND TITLE 44, AND ANY FORM, STATEMENT REPORT, OR OTHER DOCUMENT PRESCRIBED BY THE EXECUTIVE DIRECTOR FOR REPORTING A TAX LIABILITY, A FEE LIABILITY, OR OTHER INFORMATION REQUIRED TO BE RETURNED TO THE EXECUTIVE DIRECTOR, INCLUDING THE REPORTING OF CHANGES OR AMENDMENTS THERETO, AND ANY SCHEDULE CERTIFICATION, WORKSHEET, OR OTHER DOCUMENT REQUIRED TO ACCOMPANY THE RETURN.

(2) EXCEPT AS PROVIDED IN SUBSECTION (6) OF THIS SECTION, THE EXECUTIVE DIRECTOR MAY, AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION, REQUIRE THE ELECTRONIC FILING OF RETURNS AND REQUIRE THE PAYMENT OF ANY TAX OR FEE DUE BY ELECTRONIC FUNDS TRANSFER FOR THE FOLLOWING:

(a) ANY INCOME TAX RETURN REQUIRED FOR:

(I) A C CORPORATION PURSUANT TO SECTION 39-22-601 (2);

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(II) A S CORPORATION PURSUANT TO SECTION 39-22-601 (2.5);

(III) A FIDUCIARY PURSUANT TO SECTION 39-22-601 (3), INCLUDING WITHHOLDING FOR NONRESIDENT BENEFICIARIES PURSUANT TO SECTION 39-22-601 (4); AND

(IV) A PARTNERSHIP PURSUANT TO SECTION 39-22-601 (5), INCLUDING COMPOSITE RETURNS FILED ON BEHALF OF NONRESIDENT PARTNERS, AGREEMENTS FILED UNDER SECTION 39-22-601 (5)(e), AND PAYMENTS MADE UNDER SECTION 39-22-601 (5)(h);

(b) ANY PAYMENT OF INCOME TAX REQUIRED BY:

(I) WITHHOLDING FOR TRANSFERS OF COLORADO REAL PROPERTY PURSUANT TO SECTION 39-22-604.5;

(II) ESTIMATED PAYMENTS BY A C CORPORATION PURSUANT TO SECTION 39-22-606; AND

(III) INCOME TAX PAYMENTS DUE WITH RETURN FILING PURSUANT TO SECTION 39-22-609, BUT NOT FOR INDIVIDUALS WHO ARE REQUIRED TO FILE A RETURN PURSUANT TO SECTION 39-22-601 (1).

(c) ANY ANNUAL STATEMENT OF WAGE WITHHOLDING REQUIRED TO BE FILED OR REMITTANCE OF WAGE WITHHOLDING REQUIRED TO BE MADE BY AN EMPLOYER PURSUANT TO SECTION 39-22-604;

(d) ANY WITHHOLDING OF INCOME REPORT REQUIRED TO BE FILED FOR ANY OIL AND GAS INTEREST PURSUANT TO SECTION 39-29-111;

(e) ANY SEVERANCE TAX RETURN FROM ANY OIL AND GAS INTEREST REQUIRED TO BE FILED PURSUANT TO SECTION 39-29-112;

(f) ANY SALES TAX RETURN REQUIRED TO BE FILED PURSUANT TO SECTION 39-26-105;

(g) ANY SALES TAX RETURN REQUIRED TO BE FILED BY A PERSON WITH A DIRECT PAYMENT PERMIT ISSUED PURSUANT TO SECTION 39-26-103.5;

(h) ANY USE TAX RETURN TO BE FILED AND PAYMENT REQUIRED TO BE PAID PURSUANT TO SECTIONS 39-26-204 (1)(a) OR (2);

(i) ANY MOTOR FUEL TAX RETURN REQUIRED TO BE FILED AND PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 39-27-303;

(j) ANY CIGARETTE EXCISE TAX RETURN REQUIRED TO BE FILED AND PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 39-28-104;

(k) ANY TOBACCO PRODUCTS EXCISE TAX RETURN REQUIRED TO BE FILED AND PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 39-28.5-106;

(l) ANY PUBLIC UTILITY RETURN REQUIRED TO BE FILED PURSUANT TO SECTION 40-2-111 AND THE PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 40-2-113;

(m) ANY PASSENGER-MILE TAX RETURN TO BE FILED AND PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 42-3-308;

(n) ANY LIQUOR EXCISE TAX RETURN REQUIRED TO BE FILED AND PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 44-3-503 (3);

(o) ANY DIRECT SHIPPER RETURN REQUIRED TO BE FILED PURSUANT TO SECTION 44-3-503 (5) AND THE PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 44-3-503 (6);

(p) ANY COUNTY LODGING TAX RETURN REQUIRED TO BE FILED AND PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 30-11-107.5;

(q) ANY MARKETING AND PROMOTION TAX RETURN REQUIRED TO BE FILED AND PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 29-25-112 (1)(b)(I);

(r) ANY DAILY VEHICLE RENTAL FEE REPORT REQUIRED TO BE FILED AND PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 43-4-804 (1)(b)(II);

(s) ANY PREPAID WIRELESS E911 CHARGE REPORT REQUIRED TO BE FILED AND PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 29-11-102.5 (3); AND

(t) ANY PREPAID WIRELESS TELECOMMUNICATIONS RELAY SERVICE CHARGE REPORT REQUIRED TO BE FILED AND PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 29-11-102.7 (3).

(3) THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24 TO IMPLEMENT MANDATORY ELECTRONIC FILING AND ELECTRONIC FUNDS TRANSFERS FOR THE RETURNS AND PAYMENTS DESCRIBED IN SUBSECTION (2) OF THIS SECTION FOR TAXABLE PERIODS BEGINNING ON AND AFTER JANUARY 1, 2020, OR ON AND AFTER THE DATE WHEN THE EXECUTIVE DIRECTOR ESTABLISHES A SYSTEM FOR ELECTRONIC FILING AND ELECTRONIC FUNDS TRANSFERS, WHICHEVER OCCURS LATER. MANDATORY ELECTRONIC FILING AND MANDATORY PAYMENT BY ELECTRONIC FUNDS TRANSFERS MUST BE STAGGERED FOR EACH TAX TYPE OVER A PERIOD OF NOT LESS THAN THREE YEARS, MUST BEGIN WITH LARGE TAXPAYERS, AND MAY ALLOW ADDITIONAL TIME FOR SMALL TAXPAYERS TO COMPLY. THE THRESHOLDS FOR EACH IMPLEMENTATION GROUP SHALL BE DETERMINED BY THE EXECUTIVE DIRECTOR IN HIS OR HER DISCRETION.

(4) EXCEPT AS PROVIDED IN SUBSECTION (6) OF THIS SECTION, ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (4), ELECTRONIC FILING OF RETURNS AND THE PAYMENT OF ANY TAX OR FEE BY ELECTRONIC FUNDS TRANSFER IS REQUIRED FOR THE FOLLOWING:

(a) ANY INCOME TAX RETURN CLAIMING AN ENTERPRISE ZONE CREDIT REQUIRED TO BE FILED PURSUANT TO SECTION 39-30-111;

(b) ANY WITHHOLDING OF INCOME REQUIRED TO BE MADE FROM ANY OIL AND GAS INTEREST PURSUANT TO SECTION 39-29-111;

(c) ANY SALES TAX REMITTANCE REQUIRED TO BE PAID PURSUANT TO SECTION 39-26-105.5;

(d) ANY GASOLINE OR SPECIAL FUEL REPORT REQUIRED TO BE FILED PURSUANT TO SECTION 39-27-105 AND THE PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 39-27-105.3;

(e) ANY RETAIL MARIJUANA EXCISE TAX RETURN REQUIRED TO BE FILED AND PAYMENT REQUIRED TO BE MADE PURSUANT TO SECTION 39-28.8-304; AND

(f) ANY RETAIL MARIJUANA SALES TAX RETURN REQUIRED TO BE FILED AND PAYMENT REQUIRED TO BE PAID PURSUANT TO SECTION 39-28.8-202.

(5) (a) IF ANY PERSON FAILS OR REFUSES TO FILE A RETURN ELECTRONICALLY AS SPECIFIED IN THIS SECTION, THE DEPARTMENT SHALL COLLECT A PENALTY OF FIFTY DOLLARS FOR SUCH FAILURE OR FIVE PERCENT OF THE PROPER AMOUNT OF TAX ON SUCH RETURN, WHICHEVER IS GREATER.

(b) IF ANY PERSON FAILS TO PAY BY ELECTRONIC FUNDS TRANSFER ANY TAX OR FEE, INCLUDING ANY ADDITION TO TAX, DUE TO THE EXECUTIVE DIRECTOR AS SPECIFIED IN THIS SECTION, THE DEPARTMENT SHALL COLLECT A PENALTY OF FIFTY DOLLARS FOR SUCH FAILURE OR FIVE PERCENT OF THE PROPER AMOUNT OF TAX ON SUCH RETURN, WHICHEVER IS GREATER.

(c) AS USED IN SUBSECTIONS (5)(a) AND (5)(b) OF THIS SECTION, "TAX" MEANS THE NET AMOUNT OF TAX SHOWN TO BE DUE ON THE RETURN FILED BY THE TAXPAYER AND REDUCED BY THE AMOUNT OF ANY CREDIT AGAINST THE TAX WHICH MAY BE CLAIMED ON THE RETURN. IF THE PENALTIES PROVIDED FOR IN SUBSECTIONS (5)(a) AND (5)(b) OF THIS SECTION BOTH APPLY, ONLY THE LARGER OF THE TWO PENALTIES MAY BE ASSESSED.

(d) (I) ANY TAX PREPARER PREPARING A TAX RETURN SHALL BE REQUIRED TO FILE RETURNS ELECTRONICALLY AND PAY ANY TAX OR FEE BY ELECTRONIC FUNDS TRANSFERS IF THE TAXPAYER IS REQUIRED TO DO SO PURSUANT TO THIS SECTION.

(II) A PENALTY ASSESSED AGAINST THE TAXPAYER PURSUANT TO SUBSECTION (5)(a) OR (5)(b) OF THIS SECTION MUST BE ASSESSED AGAINST THE TAXPAYER AND MAY NOT BE ASSESSED AGAINST THE TAX PREPARER.

(e) A PENALTY ASSESSED AGAINST THE TAXPAYER PURSUANT TO SUBSECTION (5)(a) OR (5)(b) OF THIS SECTION ARE ASSESSED, COLLECTED, AND PAID IN THE SAME MANNER AS THE TAX OR FEE TO WHICH SUCH PENALTY RELATES.

(f) THE EXECUTIVE DIRECTOR MAY WAIVE FOR GOOD CAUSE SHOWN ANY PENALTY ASSESSED PURSUANT TO THIS SUBSECTION (5).

(6) (a) ANY PERSON WHO IS REQUIRED TO FILE RETURNS ELECTRONICALLY OR MAKE THE PAYMENT OF ANY TAX OR FEE BY ELECTRONIC FUNDS TRANSFER

PURSUANT TO THIS SECTION MAY APPLY TO THE EXECUTIVE DIRECTOR, ON A FORM PRESCRIBED BY THE DEPARTMENT, FOR AN ANNUAL WAIVER FROM THE REQUIREMENTS SET FORTH IN THIS SECTION. THE EXECUTIVE DIRECTOR MAY GRANT A REQUEST FOR A WAIVER, AND MAY GRANT A RENEWAL REQUEST FOR ONE SUBSEQUENT YEAR, IF ANY OF THE FOLLOWING APPLY:

(I) THE TAXPAYER DOES NOT HAVE A COMPUTER;

(II) THE TAXPAYER DOES NOT HAVE INTERNET ACCESS; OR

(III) THE TAXPAYER SHOWS GOOD CAUSE FOR WHY THE FILING OF RETURNS ELECTRONICALLY OR MAKING THE PAYMENT OF ANY TAX OR FEE BY ELECTRONIC FUNDS TRANSFER WOULD CAUSE UNDUE HARDSHIP.

(b) THE EXECUTIVE DIRECTOR MAY WAIVE THE REQUIREMENT TO FILE RETURNS ELECTRONICALLY IF THE RETURN CANNOT BE FILED ELECTRONICALLY FOR REASONS BEYOND THE TAXPAYER'S CONTROL, INCLUDING SITUATIONS IN WHICH THE TAXPAYER IS INSTRUCTED BY EITHER THE INTERNAL REVENUE SERVICE OR THE DEPARTMENT TO FILE BY PAPER.

(c) THE EXECUTIVE DIRECTOR SHALL NOT REQUIRE ANY TAXPAYER REQUIRED TO REMIT A TAX BY ELECTRONIC FUNDS TRANSFERS TO REMIT THE TAX PRIOR TO THE DEADLINE SPECIFIED FOR TAXPAYERS WHO REMIT THE TAX BY OTHER MEANS; EXCEPT THAT THE EXECUTIVE DIRECTOR MAY REQUIRE A TAXPAYER TO REMIT A TAX BY ELECTRONIC FUNDS TRANSFERS AT AN EARLIER HOUR ON THE DAY OF THE DEADLINE FOR MAKING A RETURN AND PAYING THE TAX DUE THAN TAXPAYERS WHO REMIT THE TAX BY OTHER MEANS.

SECTION 2. In Colorado Revised Statutes, 39-21-120, **amend** (1) as follows:

39-21-120. Signature and filing alternatives for tax returns. (1) For the purposes of any returns or other documents made, filed, signed, subscribed, verified, transmitted, received, or stored pursuant to articles 22 to 31 of this ~~title~~ TITLE 39, articles 46 and 47 of title 12, article 60 of title 34, and article 3 of title 42, ~~C.R.S.~~, the executive director may prescribe ~~voluntary~~ alternative methods for the making, filing, signing, subscribing, verifying, transmitting, receiving, or storing of returns or other documents pursuant to the statutory provisions of this ~~article~~ ARTICLE 21 and other articles referenced in this ~~article~~ ARTICLE 21. The executive director shall adopt rules as may be appropriate to define and implement acceptable alternatives for each article within the scope of this section.

SECTION 3. In Colorado Revised Statutes, 39-22-604, **repeal** (4)(a) as follows:

39-22-604. Withholding tax - requirement to withhold - tax lien - exemption from lien - definitions. (4) (a) ~~The executive director may require any taxpayer who has an annual estimated withheld tax liability of more than fifty thousand dollars to remit withheld tax by electronic funds transfer. The executive director may promulgate rules to implement remittances by electronic funds transfer and shall promulgate rules prescribing withholding tax periods and the corresponding tax return filing and tax payment due dates. The executive director shall consult with the state treasurer regarding the formulation of such rules and regulations in~~

order to minimize the amount of lost interest to the state general fund.

SECTION 4. In Colorado Revised Statutes, **amend as amended by Senate Bill 19-024 39-26-105.5** as follows:

39-26-105.5. Remittance of sales taxes - electronic funds transfers. ~~For any calendar year, the executive director may require any~~ AS SPECIFIED IN SECTION 39-22-119.5, A vendor whose liability for state sales tax only for the previous calendar year was more than seventy-five thousand dollars ~~to~~ SHALL use electronic funds transfers to remit all state and local sales taxes required to be remitted to the executive director of the department of revenue. ~~The executive director may promulgate rules to implement this section, but shall first consult with the state treasurer to ensure that any rules promulgated do not adversely affect the ability of the state treasurer to optimize sales tax investment earnings. Such rules shall be promulgated in accordance with article 4 of title 24. The executive director shall not require any taxpayer required to remit sales taxes by electronic funds transfers to remit sales tax prior to the deadline specified in section 39-26-105 for taxpayers who remit sales taxes by other means; except that the executive director may require a taxpayer to remit sales taxes by electronic funds transfers at an earlier hour on the day of the deadline for making a return and paying the taxes due that is specified in section 39-26-105 than taxpayers who remit sales taxes by other means.~~

SECTION 5. In Colorado Revised Statutes, **amend 39-27-105.3** as follows:

39-27-105.3. Remittance of tax on gasoline and special fuel - electronic funds transfers. ~~For any calendar month, the executive director may require any~~ A distributor, supplier, carrier, exporter, importer, blender, refiner, licensee, or terminal operator ~~to use electronic funds transfers to~~ SHALL remit all taxes required to be remitted to the department of revenue on or before the twenty-sixth day of each calendar month. ~~The executive director may promulgate rules to implement this section, but shall first consult with the state treasurer to ensure that any rules promulgated do not adversely affect the ability of the state treasurer to optimize gasoline and special fuel tax investment earnings. Such rules shall be promulgated in accordance with article 4 of title 24.~~

SECTION 6. In Colorado Revised Statutes, 39-28-104, **repeal (1)(c)** as follows:

39-28-104. Evidence of payment of tax - credits - redemptions. (1) (c) ~~The department may require wholesalers to use electronic funds transfers to remit tax payments due pursuant to this article 28 and section 21 of article X of the state constitution to the department and may require wholesalers to file tax returns electronically. The department may promulgate rules governing electronic payment and filing.~~

SECTION 7. In Colorado Revised Statutes, 39-28.5-106, **repeal (3)** as follows:

39-28.5-106. Returns and remittance of tax - civil penalty. (3) ~~The department may require distributors to use electronic funds transfers to remit tax payments due pursuant to this article 28.5 and section 21 of article X of the state constitution to the department and may require distributors to file tax returns electronically. The department may promulgate rules governing electronic payment and filing.~~

SECTION 8. In Colorado Revised Statutes, 39-28.8-202, **amend** (1)(a)(I); and **repeal** (3) as follows:

39-28.8-202. Retail marijuana sales tax. (1) (a) (I) In addition to the tax imposed pursuant to part 1 of article 26 of this title 39 and the sales tax imposed by a local government pursuant to title 29, 30, 31, or 32, but except as otherwise set forth in subsections (1)(a)(II) and (1)(a)(III) of this section, beginning January 1, 2014, and through June 30, 2017, there is imposed upon all sales of retail marijuana and retail marijuana products by a retailer a tax at the rate of ten percent of the amount of the sale. Beginning July 1, 2017, there is imposed upon all sales of retail marijuana and retail marijuana products by a retailer a tax at the rate of fifteen percent of the amount of the sale. The tax imposed by this section is computed in accordance with schedules or forms prescribed by the executive director of the department; except that a retail marijuana store is not allowed to retain any portion of the retail marijuana sales tax collected pursuant to this part 2 to cover the expenses of collecting and remitting the tax. ~~and except that the department of revenue may require a retailer to make returns and remit the tax described in this part 2 by electronic funds transfers.~~ The executive director may promulgate rules to implement this section.

~~(3) The department may require retail marijuana stores to file tax returns electronically and to remit payments due pursuant to this part 2 by electronic funds transfers. The department may promulgate rules governing electronic payment and filing.~~

SECTION 9. In Colorado Revised Statutes, 39-28.8-304, **repeal** (3) as follows:

39-28.8-304. Returns and remittance of tax - civil penalty. ~~(3) The department may require retail marijuana cultivation facilities to file tax returns electronically and to remit payments due pursuant to this part 3 by electronic funds transfers. The department may promulgate rules governing electronic payment and filing.~~

SECTION 10. In Colorado Revised Statutes, 39-29-111, **repeal as amended by Senate Bill 19-024** (1)(b) as follows:

39-29-111. Withholding of income from oil and gas interest. (1) (b) ~~The executive director may require all amounts due pursuant to subsection (1)(a) of this section to be remitted electronically. The department may promulgate rules in accordance with article 4 of title 24 governing electronic payment.~~

SECTION 11. In Colorado Revised Statutes, 39-30-111, **amend** (1) as follows:

39-30-111. Department of revenue - enterprise zone data - electronic filing - submission of carryforward schedule. (1) For the 2012 income tax year and each income tax year thereafter, any taxpayer that claims one or more income tax credits pursuant to this ~~article~~ ARTICLE 30 shall file a state income tax return with the department of revenue in an electronic format. ~~unless filing in an electronic format would cause undue hardship to the taxpayer because the taxpayer does not have access to a computer, or does not have sufficient internet access, internet capability, or computer knowledge to file income taxes electronically.~~

SECTION 12. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 31, 2019